Local Mandate Fiscal Impact Estimate Kentucky Legislative Research Commission 2017 Regular Session

Part I: Measure Information

The purpose of HB 222 is to prohibit granting shock probation to a criminal defendant in certain circumstances. The bill would amend KRS 439.265 to prohibit granting shock probation to a defendant who has been convicted of driving under the influence in violation of KRS 189A.010, and also either manslaughter in the second degree (KRS 507.040) or reckless homicide (KRS 507.050), arising out of the same incident.

HB 222 HCS keeps the original portions of the bill and adds fetal homicide in conjunction with a DUI to the offenses for which shock probation would be prohibited.

HB 222 HCS would amend KRS 439.265 to prohibit shock probation in cases where a defendant was convicted of a DUI and also KRS 507.040 (manslaughter in the second degree), KRS 507A.040 (fetal homicide in the third degree), KRS 507.050 (reckless homicide), or KRS 507A.050 (fetal homicide in the fourth degree) arising out of the same incident.

III: Fiscal Explanation, Bill Provisions, and Estimated Cost

The fiscal impact of HB 222 HCS on local governments would be none to minimal

Manslaughter II is a Class C felony offense, and Reckless Homicide a Class D felony. The Department of Corrections reports that in 2016 six (6) inmates serving jail time on a Manslaughter II or Reckless Homicide conviction were released on shock probation, and only three (3) of those inmates had an accompanying DUI conviction. Fetal homicide in the third degree is a Class C felony. Fetal homicide in the fourth degree is a Class D felony. While the number of defendants in Kentucky convicted of a DUI offense **and** fetal homicide is unknown it likely is not a high number. Given the likely small number of defendants to whom HB 222 HCS would apply, a bill denying consideration of shock probation for such inmates would have little to no fiscal impact on local governments.

What impact there could be would be due to a local jail holding some state inmates for a longer period because they aren't eligible for shock probation. Upon sentencing, a Class D felon is housed in one of Kentucky's full service jails for the duration of his or her sentence. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.34 per day, which equals the per diem and medical expenses that the Department of Corrections (DOC) pays a jail to house felony offenders. Based on this amount, each felony inmate not eligible for shock probation should cost a local jail \$11,439.10 a year (\$31.34/day x 365 days) and the jail should be reimbursed that same amount. Upon sentencing a Class D felon is housed in one of Kentucky's full service jails for the duration of his or her sentence. Since the per diem pays for the estimated average cost of housing a Class D felon, the per diem may be less than, equal to, or greater than the actual housing cost.

The local government is responsible for incarcerating a Class C felony defendant until disposition of his or her case in one of Kentucky's 76 full service jails or five life safety jails. While, again, the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.34 per day, which is the amount the DOC pays a local jail for housing a state inmate. Class C felons are ineligible for placement in a local jail until they are classified at the lowest custody level with 24 months or less to their minimum sentence expiration date or parole eligibility date. DOC pays local jails \$31.34 per day to house Class C felons. Since the per diem pays for the estimated average cost of housing a Class C felon, the per diem may be less than, equal to, or greater than the actual housing cost.

Preparer: Mary Stephens **Reviewer:** KHS **Date:** 2/23/17